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NEW YORK
NEW JERSEY

17646

December 27, 1991 DEC 27 1991 -3 15 PM

INTERSTATE COMMERCE COMMISSION

HAND DELIVERED

Mr. Sidney L. Strickland
Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. §11303(a) are two (2) copies of the Lease of Railroad Equipment dated as of February 28, 1986 (the "Lease"), a primary document as defined in the Commission's Rules for Recordation of Documents.

The names and addresses of the parties to the enclosed Lease are:

Assignee of
Lessor:

C. K. INDUSTRIES, INC.
P.O. Box 0087
DeLand, Florida 32721

Lessee:

Soo Line Railroad Company
Soo Line Building
Minneapolis, MN 55440

A description of the railroad equipment covered by the enclosed document is set forth in Schedule 1 attached hereto and made a part hereof.

Also enclosed is our check in the amount of \$16.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return a file-stamped copy of the enclosed document to Patrick K. Cameron, Esq., Ober, Kaler, Grimes & Shriver, 120 East Baltimore Street, Baltimore, Maryland 21202-1643.

DEC 27 3 08 PM '91
MOTOR OPERATING UNIT

*Counterparts
Delivered by Mr. Huggan*

OBER, KALER, GRIMES & SHRIVER

Mr. Sidney L. Strickland
December 27, 1991
Page 2

A short summary of the enclosed primary document to appear in the Commission's index is:

Lease of Railroad Equipment (the "Lease") dated as of February 28, 1986, by and between C.K. Industries, Inc., as Assignee of McDonnell Douglas Finance Corporation, and Soo Line Railroad Company, as Lessee, covering seventy-nine (79) Open Top Triple Hopper Cars now owned by C.K. Industries, Inc., together with all accessions, accessories, equipment, appurtenances, parts, improvements and attachments thereto and all substitutions and replacements thereof.

Very truly yours,



George F. Jones

Enclosures

Schedule 1

List of Borrower's road numbers for the seventy-nine (79)
100-ton open top triple hopper cars (the "Hopper Cars"):

62339	62502
62395	62309
62362	62342
62398	62495
62379	62358
62509	62320
62501	62420
62403	62487
62418	62402
62300	62503
62393	62422
62323	62374
62493	62341
62352	62369
62365	62372
62519	62353
62518	62332
62328	62489
62454	62349
62330	62389
62390	62415
62331	62411
62386	62515
62510	62505
62354	62322
62307	62363
62355	62345
62399	62426
62329	62508
62424	62360
62377	62370
62324	62511
62334	62336
62333	62306
62512	62504
62406	62337
62367	62412
62496	62325
62380	62409
62488	

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LEASE OF RAILROAD EQUIPMENT

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, made as of this 28th day of February, 1986, between McDonnell Douglas Finance Corporation, a Delaware corporation ("Lessor"), and the Soo Line Railroad Company ("Lessee"); The parties wish to enter into this Agreement with respect to the lease of certain railroad equipment subject to the following terms and conditions.

NOW, THEREFORE, the parties mutually agree as follows:

I. LEASE OF EQUIPMENT. Lessor agrees to furnish and lease to Lessee and Lessee agrees to lease from Lessor upon the terms and conditions set forth herein a number of items of equipment of the type and description set forth in Schedule(s) hereto and by this reference made a part hereof. The scheduled items of equipment are hereinafter called collectively "Cars" and each individual item of equipment is hereinafter called a "Car".

It is understood by the parties that Lessor shall at all times be and remain the owner of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with Lessor's ownership and that it will take such action and execute such documents as may be necessary to preserve the Lessor's rights in accordance with this understanding.

II. TERM. The term of the Lease with respect to any Car shall be the term specified in the Schedule(s) to this Agreement, unless sooner terminated or extended in accordance with the provisions of this Agreement. This Agreement shall become effective as to any Car or Cars immediately upon Acceptance and Delivery in accordance with Section III hereof.

III. DELIVERY AND ACCEPTANCE. Prior to delivery of the Cars, Lessee will have the opportunity, at its own expense and risk, to inspect the Cars. If upon such inspection Lessee rejects any Car as not being in good operating condition or as not being in compliance with all applicable requirements of the AAR or Federal Railway Administration ("FRA"), Lessee will provide Lessor with written notice of the deficiencies requiring correction.

At no expense to Lessee, Lessor shall deliver Cars to Lessee's railroad tracks as soon as possible following the execution of this Agreement, provided however, that Lessor shall provide Lessee with not less than five days telephonic or telex notice of the time and place of delivery of any Cars. Within five days of delivery to Lessee's railroad tracks, Lessee shall inspect any Car not previously inspected by Lessee and shall notify Lessor of any deficiencies requiring correction.

Following receipt of notice from Lessee that any Car requires repair in order to place such Car in satisfactory operating condition or in compliance with all such applicable requirements of the AAR or FRA, Lessor shall have the right, but not the

obligation, to take whatever steps it deems appropriate to correct the defects, or to designate a substitute Car or Cars. Such repaired or substituted Car shall thereupon be inspected by Lessee, and if such Car then meets such standards it shall be deemed acceptable to Lessee.

If within five days of delivery of any Car to Lessee pursuant to this section, Lessee shall not have rejected such Car, such Car shall become subject to all the terms and conditions of this Agreement. Any Car repaired or substituted following delivery to Lessee's railroad tracks shall become subject to all terms and conditions of the Agreement following satisfactory completion of the repairs or such substitution.

IV. RAILROAD MARKINGS AND RECORD KEEPING. Upon delivery and acceptance of any Car, and prior to any loaded use of such Car by Lessee, Lessee shall cause such Car to be remarked at its expense with the railroad reporting marks of Lessee. Lessor and Lessee agree that any Car may also be marked with the name of Lessor or any secured party under a financing agreement affecting such Car, and that such markings will be maintained by Lessee throughout the term of this Agreement. Lessee shall not otherwise apply markings to any Car without Lessor's prior consent. All such markings shall comply with applicable regulations.

At no cost to Lessor, Lessee shall cause to be prepared and filed all documents relating to the registration, maintenance, and operation of the Cars, including but not limited to: (i) AAR documents; (ii) registration in the UMLER and Official Railway Equipment Register; and (iii) other such reports as may be required by the ICC and/or other regulatory agencies.

Lessee shall perform all record keeping functions relating to the use and operation of the Cars by Lessee and other railroads in accordance with the Interchange Rules and AAR railroad interchange agreements, such as car hire reconciliation. All record-keeping performed by Lessee hereunder and a record of all payments, charges, maintenance, and correspondence related to the Cars shall be maintained in a form suitable for inspection during reasonable business hours by Lessor from time to time. Lessee shall supply Lessor with monthly reports regarding the use of the Cars by Lessee and by other railroads as Lessor may reasonably request.

V. RENTAL. Rentals payable hereunder shall be calculated as provided in the appropriate Schedule(s) to this Agreement, and, unless specified otherwise, shall be derived from and out of car hire and mileage payments. For the purposes of this Agreement, car hire and mileage payments shall consist of: (i) time and mileage payments accruing at published rates while any Car is operating off the system lines of Lessee, and (ii) time and mileage payments accruing for loaded use of any Car on the system lines of Lessee ("On-line Rates"). On-line Rates shall be those specified in the Schedule(s) to this Agreement.

Lessee shall collect all time and mileage payments with respect to

the use of the Cars by other railroads, and shall pay to the Lessor rental due within 70 days of the end of the month during which such time and mileage payments are earned. Payments shall be mailed monthly, addressed to the Lessor at such address as Lessor may designate.

If for any calendar quarter, the monthly time and mileage earnings with respect to the Cars are less than the Base Rental specified in the Schedule(s), Lessor may, at its option, terminate this Agreement with respect to such Cars as Lessor may determine; provided, however, that Lessee shall have the right to retain the use of the Cars by paying an amount equal to the Base Rental within ten days of notice of Lessor's intention to so terminate.

Lessee agrees that the time and mileage rates applicable to use of the Cars off the railroad tracks of Lessee shall be the maximum which may be charged under regulations published by the ICC, the AAR or any successor agencies (or, if such rates or regulations no longer exist, the rates in effect as of the date hereof) unless otherwise agreed in writing by Lessor. Lessee will not grant or allow any per diem reclaim with respect to any Car without Lessor's prior written consent, *

Lessee shall load, or order the loading of all Cars on its tracks giving the Cars the same priority as other similar cars owned or leased by Lessee. Lessee shall maintain sufficient records with respect to loadings and shipments to verify that it is loading the Cars as herein provided, and shall furnish such records to Lessor upon reasonable request therefor.

VI. REPAIR AND MAINTENANCE. Except as otherwise provided, Lessee shall, at its own cost and expense, maintain and keep the Cars in good order, condition, and repair, ordinary wear and tear excepted, suitable for their intended use and for use in interchange in accordance with the requirements of the AAR Interchange Rules, regulations of the United States Department of Transportation, the Interstate Commerce Commission, and other governmental authorities having jurisdiction over the Cars. Any replacement parts applied by Lessee in connection with its maintenance of the Cars shall be of a quality and type equivalent to the parts on the Cars at the time of delivery.

Lessee shall not alter, modify or improve any Car without the written authority of Lessor. Any and all replacement parts and modifications shall constitute accessions to the Cars and shall become the property of Lessor. If Lessee makes any alteration, modification, or improvement without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration, and for any costs reasonably incurred by Lessor to restore such Car to its condition prior to such change.

VII. POSSESSION AND USE. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent

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* other than switching reclaims which may arise pursuant to Car Hire Rule 5 of AAR Circular No. OT-10, Code of Car Hire Rules and Interpretations-Freight.

Cars are customarily used in the railroad freight business. However, Lessee's rights shall be subject and subordinate to the rights of any secured party under any financing agreement entered into by Lessor in connection with the acquisition of some or all of the Cars; i.e., upon notice to Lessee from any such secured party that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent be paid directly to such party and/or that the Cars be immediately returned to such party.

Lessee agrees that to the extent it has physical possession and control of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which they may be located and in compliance with all lawful acts, regulations, rules, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings contest the application of any such rules, regulations, or orders in any reasonable manner at the expense of the contesting party.

Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim (other than a lien on the leasehold interest of Lessee which may exist by virtue of the First and General Mortgages of Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, each dated as of January 1, 1944, and the First and General Mortgages of Wisconsin Central Railroad Company, each dated as of January 1, 1954, which mortgages were assumed by Lessee under Supplemental Indentures dated as of January 1, 1961) on or with respect to the Cars or any interest therein or in this Agreement or any Schedule hereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time during the term hereof.

Lessee agrees that it shall not during the term of this Agreement use or fail to use the Cars in any manner within the meaning of Sections 48(a)4 or 48(a)5 of the Internal Revenue Code of 1954, as amended, as to disqualify said Cars from tax benefits otherwise available to Lessor. Lessee further agrees to operate the Cars predominantly within the 48 contiguous states of the United States.

VIII. INDEMNIFICATION AND INSURANCE From the date of Acceptance of each Car under Section III hereof until the termination of this Agreement with respect to each such Car, the possession, use, operation and maintenance of such Car shall be at the sole risk and expense of the Lessee. Lessee shall indemnify and save harmless the Lessor from and against all liability, cost and expense arising during the term of this Agreement with respect to each Car from (a) any and all loss or damage of or to the Car, usual wear and tear excepted, and (b) any claim, cause of action, damages or liability (including reasonable attorney fees and expenses in connection therewith) which the Lessor may incur in

any manner by reason of its leasehold obligations, which may arise in any manner out of, or as a result of, the use, maintenance, repair or operation of any Car or by reason of its condition (whether defects are latent, patent or discernible by Lessee), or as a result of claims for negligence or strict liability in tort. In consideration of Lessee's obligation to indemnify Lessor pursuant to this section, Lessor agrees to assign to Lessee any rights Lessor may have against any third party in connection with any matter so indemnified.

During the term of this Agreement, Lessee shall be responsible for the Cars while in Lessee's possession and control, in the same manner that Lessee is responsible for foreign lines' railroad equipment under AAR Interchange Rules for similar equipment not owned or controlled by Lessee. At its own expense, Lessee shall, at all times while this Agreement is in effect, insure or self-insure the Cars against property damage and public liability claims in the same manner it insures other items of freight equipment owned or controlled by Lessee. Lessee shall furnish Lessor with reasonable evidence of such insurance.

IX. LOSS OR DESTRUCTION OF CARS . The time, methods and amounts of payments for and determinations that a Car is lost, destroyed or damaged beyond repair shall be handled in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations - Freight. A Car which is so determined to be lost, destroyed, or damaged beyond repair shall be removed from the rental calculations of this Agreement on the date Lessee requests a depreciated value statement from Lessor.

Lessee will at all times be responsible to Lessor for the collection from third parties and remittance to Lessor of all amounts for which such third parties may be liable to Lessee, directly or indirectly, by reason of the loss, destruction, or damage beyond repair of any Car while such Car is on the railroad tracks of the third party. Lessee shall forward to Lessor any such amounts received from third parties immediately upon receipt.

X. TAXES . Lessee will be responsible for, and will promptly pay all property taxes legally levied upon the Cars during the term of this Agreement; provided however, that Lessee need not pay any such tax while it is contesting the validity thereof in good faith and by appropriate proceedings at its sole expense, and provided further that the nonpayment thereof does not in the reasonable opinion of Lessor and Lessee adversely affect the interests of Lessor in the Cars or in this Agreement. Lessee further agrees to file all property tax reports and returns relating to the Cars which it is legally permitted to file, and to comply with all state and local laws requiring the filing of ad valorem tax returns.

Lessee will be responsible for, and shall indemnify and hold harmless the Lessor from, any sales and/or use taxes or similar taxes, tariffs, duties, customs, switching, demurrage or other

charges made or imposed by any governmental agency, railroad, or other party in respect of any of the Cars during the term of this Agreement.

XI. TERMINATION . At the expiration of this Agreement as to any Car, Lessee will surrender possession of such Car to Lessor by delivering such Car to Lessor at an interchange point on Lessee's railroad tracks designated by Lessor. The Cars shall be returned free of refuse, clean, and suitable for the purpose originally intended, with all outlet gates in normal working order, meeting all federal safety rules and regulations, and meeting all requirements for interchange service for cars of comparable age prescribed in the field manual of the AAR Interchange Rules, then current edition, or successor publication. Upon such delivery, Lessor and Lessee shall conduct a joint inspection of the Cars, and any disputes shall be settled by a third party jointly selected by Lessor and Lessee. For any Car not returned in the condition required hereby, Lessee shall be liable to Lessor for any and all cleaning, repair or servicing costs required to place such Car in such proper condition. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from such Car and the placing thereon at Lessee's expense of such markings as may be designated by Lessor.

Upon expiration or termination of this Agreement, Lessee agrees to provide storage of the Cars at its expense, upon the prior written request of Lessor, for any or all of the Cars for a period of ninety (90) days from the date of such expiration or termination. Nothing in this paragraph shall give Lessee the right to retain possession of any Car after expiration of this Agreement. Lessee shall not be liable for any losses sustained by Lessor in respect of such stored Car by reason of pilferage, vandalism, damage or destruction resulting from acts of third persons or any cause other than the sole active negligence of Lessee.

XII. INSPECTION . Lessor shall have the right at any time during normal business hours and upon reasonable notice to enter the premises of Lessee for the purpose of inspecting the Cars and records relating to the Cars to insure Lessee's compliance with its obligations hereunder. Lessee agrees to use its best efforts to arrange for such inspections by Lessor of any Cars which may be located on property not owned by Lessee. Any such inspections shall be at the sole expense and risk of Lessor.

Lessee shall immediately notify Lessor of any accident involving personal injury connected with the malfunctioning or operation of the Cars, including in such report the time, place, and nature of the accident, and other information pertinent to Lessor's investigation of the accident. Lessee shall also notify Lessor in writing within five (5) days after any tax lien or other judicial process shall attach to any Car.

XIII. DEFAULT . The occurrence of any of the following events shall be an Event of Default:

- (i) The nonpayment by Lessee of any sum required to be paid by Lessee within ten (10) days after such payment is due and unpaid;
- (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days after receipt of written notice from Lessor of such breach;
- (iii) Any act of insolvency or bankruptcy of Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency, or moratorium law, or any other law or laws for the relief of, or relating to, debtors;
- (iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of filing or appointment;
- (v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency if such actions would materially affect the interests of Lessor hereunder;
- (vi) Any action by Lessee to discontinue rail service on any portion of its rail properties if such action could significantly affect utilization of the Cars;
- (vii) Any representation or warranty made by Lessee herein shall prove to have been false or incorrect in any material respect on the date when made and such breach or default shall continue for a period of thirty (30) days after written notice of such default has been received.

Upon the occurrence of any such Event of Default, Lessor may, at its option and to the extent permitted by law (including applicable sections of the Federal Bankruptcy Code):

- (i) Terminate this Agreement; proceed by any lawful means to recover damages for a breach hereof (unless the Event of Default shall have arisen pursuant to Section XIII(vi) above); and terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate and thereupon Lessor may lawfully enter upon any premises where the Cars are located and take possession of them and henceforth hold, possess, and enjoy the same free from any right of the Lessee, provided that Lessor shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to

the date on which Lessor took such possession; or,

- (ii) Proceed by any lawful means to enforce performance by Lessee of this Agreement. Lessee agrees to bear the costs and expenses, including without limitation reasonable attorneys's fees, incurred by Lessor in connection with the exercise of its remedies pursuant to this section.

XIV. MISCELLANEOUS. A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not, without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder to any party, and any purported assignment in violation hereof shall be void. It is understood and agreed that Lessor may assign this Agreement with respect to some or all of the Cars listed on any Schedules hereto. Upon delivery of a notice of such assignment to Lessee, the term "Lessor" as used herein shall mean such Lease Assignee, and Lessor shall be relieved of all of its obligations and liabilities under this Agreement relating to such Cars. Lessee agrees to give its consent and to acknowledge, upon receipt of notice of assignment, such Assignment of this Agreement by Lessor. Lessor warrants that any Lease Assignee of the Cars will subject such Cars to all the terms and conditions of this Lease.

B. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is hereby created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as lessee.

C. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power, or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power, or remedy preclude any further exercise thereof or the exercise of any other right, power, or remedy.

D. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

E. All notices hereunder shall be in writing and shall be deemed given when delivered personally or three days after deposit in the United States mail, postage prepaid, certified or registered, addressed to the other party as set forth below.

F. This Agreement represents the entire agreement, and shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below to be effective as of the date first above written.

MCDONNELL DOUGLAS
FINANCE CORPORATION:

By: *[Signature]*

Its: *S. V. P.*

Attn: Director-Equipment
340 Golden Shore
Long Beach, CA 90802

Date: *3/12/86*

SOO LINE RAILROAD COMPANY:

By: *[Signature]*

Its: *EXECUTIVE VICE PRESIDENT - OPERATIONS*

Attn: General Manager-Equipment
Soo Line Building
Minneapolis, MN 55440

Date: *MARCH 7, 1986*

SCHEDULE NO. 1

To Lease of Railroad Equipment dated as of February ~~28~~, 1986,
between McDonnell Douglas Finance Corporation ("Lessor") and The Soo
Line Railroad Company ("Lessee").

I. EQUIPMENT: 83, 4000-cu.ft., 100-ton capacity open top
hoppers, riveted construction, equipped
with rotary couplers, built 1978-79

Car Numbers: MCHX 70061 through 70144
excluding 70141

II. LEASE TERM shall be two years from the Rental Start Date.

III. LEASE RENTAL: For purposes of this Schedule No. 1, "Payments"
shall consist of (i) all per diem and mileage compensation received
from other railroads for the off-line use of the Cars, and (ii) time
and mileage compensation for loaded, on-line use calculated at
On-line Rates. Lease Rental shall be an amount equal to 100% of all
Payments up to \$325.00 per Car per month.

IV. ON-LINE RATES shall be \$0.80 per hour and \$0.075 per mile.

V. BASE RENTAL shall be \$275.00 per Car per month, net.

VI. RENTAL START DATE: For purposes of the Agreement, Lease Rental
shall commence to accrue from the earlier of: (i) the first loaded
use by Lessee of any Car or Cars, or (ii) ~~March~~ 1, 1986 (the "Rental
Start Date"). _{APRIL}

VII. RENEWAL OPTIONS: Lessee shall have the right, upon written
notice to Lessor given not less than 90 days prior to the expiration
of the initial lease term, to renew the Agreement for an additional
three (3) years at a fixed monthly rental of \$345.00 per Car per
month. In the event Lessee shall fail to give such notice, Lessor
shall have the right, upon written notice given not less than 45
days prior to the expiration of the initial lease term, to require
Lessee to extend the Agreement for three (3) years at a fixed
monthly rental of \$310.00 per Car per month.

MCDONNELL DOUGLAS
FINANCE CORPORATION:

By: [Signature]

Its: [Signature]

Date: 3/12/86

SOO LINE RAILROAD COMPANY:

By: [Signature]

Its: EXECUTIVE VICE PRESIDENT - OPERATIONS

Date: MARCH 7, 1986

CODE OF CAR HIRE RULES AND INTERPRETATIONS—FREIGHT—CONTINUED

Director of Auditing of the AAR will periodically verify that such in the UMLER file are still eligible for registration with an and will also check for any deficiencies in the reimburse-

road refuses to reprocess its car record data to correct defi- ch have resulted in a retroactive decrease in the car hire ving been identified by the Secretary or discovered by the of Auditing, the Committee on Car Hire will review the the deficiency as identified by either the Secretary or the of Auditing and the road's position for refusing to reprocess data and, if it is deemed necessary, order an audit under the Appendix "L." The entire cost of the audit will be paid by the

UMLER submissions containing changes to mechanical must be accompanied by a statement verifying compliance opriate section of Circular No. OT-5 Series Owners having gistered with mechanical designations subsequently found ified must, within five (5) months from the date the error is reimburse double the amount of the excess collections, if

Eliminated July 1, 1981.

The provisions of Sub-paragraphs 2, 3, and 4 relating to reim- and the recovery of additional amounts will not apply to tching roads, except when cars of their ownership may be in-

In order to make appropriate reimbursements to car users re- b-paragraphs 3 and 4, car owners will retain records as to e receipts for three (3) full calendar years prior to the current

Refer to Circular No. OT-37 Series for rules governing valua- of rebuilt and secondhand cars for the purpose of car hire

Refer to appropriate section of Circular No. OT-5 Series for rules governing the assignment of mechanical designations

Refer to Circular No. OT-24 Series for rules governing the valuation and age data on freight cars bearing railroad report- or car hire rate purposes.

A car owner may place its refrigerator cars of class "R" Designation, and railroad-owned tank cars upon a mileage notice to the Secretary, Transportation Division, providing of such cars is furnished to the Secretary as required in the Machine Language Equipment Register (UMLER) format. The will advise all interested carriers accordingly stating the effec- which shall be the first day of the second month following the ce to the Secretary. When a car owner exercises the above op- place all of its tank cars on a mileage basis. A car owner is not place its total ownership of Class "R" refrigerators on a sis, but may place all of its cars of a particular Mechanical n on a mileage basis and permit its refrigerators of other Class anical Designation to operate under the time and line haul charges as specified in the "Car Hire Rate Table." Such arrange- remain in effect at least one (1) year and thereafter may be on the first day of the second month following the date of the Secretary.

Refrigerator cars of Class "R" and tank cars of Class "T" Designations carrying railroad reporting marks, when placed e rather than car hire basis of compensation by the car owner ce with Rule 1 (d)(1), will be subject to the rates shown in riff No. PHJ 6007-Series or, where applicable in respect to s within Canada, Canadian Freight Association Tariff No. es and supplements thereto.

The following roads have placed their refrigerator cars, iden- porting mark and mechanical designation, on a mileage basis provisions of this rule.

Railroad	Date Effective
Burlington Northern (BN)-RB; (BRE)-RS;	
(NP)-RB; (RBW)-RB; (WFE)-RS;	
(WHI)-RS-RB	10-1-75
San Luis Central (SLC)-RB	6-1-75
Western Pacific (WP)-RBL	7-1-56

Railroads electing to place their tank cars on a mileage basis nit in the UMLER format information to the Secretary, tion Division, A A R., for assignment of mileage rates and of cars in the "Car Hire Master List."

The following roads have placed tank cars of their ownership e basis under the provisions of this rule.

Railroad	Date Effective
Southern Ry. System	12-1-64

hire rates applicable to freight cars interchanged by a with a common carrier by water for the hours such cars are in

possession of the water carrier and until such cars are again interchanged to a subscriber shall be the rate prescribed by RULE 1, subject to the free and unrestrained right of independent action accorded subscribers by Section XII of the Section 5b Agreement dated June 15, 1977 or such rate as may from time to time be lawfully prescribed by the Interstate Commerce Commission.

RULE 1B

A subscriber interchanging freight cars with a common carrier by water shall pay the car hire for the hours such cars are in the possession of the water carrier and until such cars are again interchanged to a subscriber.

RULE 2—Calculation of Hours and Mileage

When computing the payable hours the minutes shall be disregarded. The hour of receipt shall be disregarded and payment made for the hour of delivery. A car received and delivered within the same hour accrues no time charge.

Line-haul mileage will be computed for loaded and empty movement on the basis of actual line-haul miles.

Records of receipt and delivery under this rule shall be those obtained from the reports provided for in Rule 9.

Note: For calculation purposes the days on which daylight savings time begins and ends shall be considered as having twenty-four (24) hours.

RULE 3—Open

Intentionally not used.

RULE 4—Exemptions from Charges

(a) Empty cars handled under revenue billing in line haul or switching service are exempt from car hire charges.

(b) Car hire charges will be allowed on cars out of service for repair, unfit for service or lying idle except as provided for in Car Hire Rules 7 and 8.

RULE 5—Switching Reclaims

(a) An amount (Note 1) for each loaded car handled in Terminal Switching Service except as otherwise provided in paragraph (b) may be reclaimed by each individual switching road from the road for which the service was performed. In determining the amount, an average number of hours not to exceed one hundred twenty (120) hours shall be used. The average number of hours shall be determined annually, or at such other periods as may be agreed upon by the interested roads, by an examination of the records (Note 2) of each individual switching road for each local territory. However, on the request of the majority of the interested roads in any local territory, the settlement of terminal switching reclaims will be on the basis of actual time involved in handling of cars during the month for which the reclaim is made subject to a maximum of one hundred ninety-two (192) hours on any one car and the maximum average of one hundred twenty (120) hours per car.

(a)(1) An amount (Note 1) for each car loaded or empty handled in Intermediate Switching Service, except as otherwise provided in paragraph (e), may be reclaimed from the delivering carrier. In determining the amount, an average not to exceed twenty-four (24) hours shall be used. The average shall be determined annually, or at such periods as may be agreed upon by the interested roads, by an examination of records (Note 2) of each individual switching road for each local territory. However, on the request of the majority of the interested roads in any local territory, the settlement of intermediate reclaims may be made on the basis of actual time involved in handling of cars during the month for which reclaim is made and, except as provided in paragraph (e), may reclaim from delivering road an hour/hours with maximum of twenty-four (24) hours car hire only on any car on which car hire accrues while in intermediate switching service.

(a)(2) When the provision for actual time reclaim calculation is exercised, it must remain in effect for a minimum of one (1) year

(b) An amount (Note 1) equal to the actual car hire accruing on each car moving in unit trains and/or multi-car shipments and handled in switching service, may be reclaimed by each individual switching road from the road for which the service was performed. A unit train, and/or multi-car shipment, is defined as one which applies to a shipment moving under one bill of lading organized and operated as a unit from a single point of origin to one destination, and covered by a Tariff provision requiring loading or unloading in a specific number of hours and at detention penalties greater than those shown in demurrage tariffs.

(c) A terminal switching road delivering a car to an intermediate switching road for delivery to a carrier road shall pay the reclaim to the intermediate switching road and may reclaim such amount from the carrier road for which the service was performed

(d) No reclaim shall be allowed for an interterminal switching movement

(e) Unless otherwise unanimously agreed to by the interested roads, the Code of Switching Reclaim Rules-Freight of the Association of

American allowances.

(f) When bitaries under vision of the among the terminal switch check, unless

(f)(1) ed in intermed interested for each line.

(f)(2) minimal and nse will be of the number

(f)(3) traries under ries so estab month follow tion of Amer become effect the check.

Note 1 duct of (1) subject to max paid on each

Note 2 allowances miles in length Committee, and that Com

5(a) charge is as Answer 5(b) to be switched car is unloaded to road "C" within the charges for charge, is road that the car road "A"?

Answer ment from terminal switching

5(c) for switching of quality and orders car to which point road "C" or

Answer original inbound to "C" was

5(d) for switcher road "A" switching time "A" on the the outboard

Answer 5(e) allowance und (1) year and the it the intention

Answer mand a check Hire Rule 5 records avail have not been road/roads m pate in such

Question in such check rule?

Answer to have its record that it will not switching road has been made Freight and the apply to reclaim

CODE OF CAR HIRE RULES AND INTERPRETATIONS—FREIGHT—CONTINUED

American Railroads shall govern in determining switching reclaim allowances.

(f) When checks for the purpose of establishing or revising arbitraries under the provisions of Car Hire Rule 5 are made under the supervision of the Association of American Railroads, the cost will be prorated among the interested lines on the basis of the number of cars handled in terminal switching service for each line during the year covered by the check, unless otherwise unanimously agreed.

(f)(1) When checks are made to establish arbitraries on cars handling intermediate switching service, the cost will be prorated among the interested lines on the basis of the number of cars handled in that service for each line.

(f)(2) When checks are made covering cars handled in both terminal and intermediate switching service to establish arbitraries, the expense will be separately prorated among the interested lines on the basis of the number of cars handled for each line in each class of service.

(f)(3) When checks for the purpose of establishing or revising arbitraries under the provisions of Car Hire Rule 5 are requested, the arbitraries so established or revised shall become effective on the first day of the month following such request. When a check is initiated by the Association of American Railroads, the arbitraries so established or revised shall become effective on the first day of the month following completion of the check.

Note 1: The word "Amount" as used in this rule shall be the product of (1) average time established as an arbitrary, or actual time, subject to maximums provided in this Rule, and (2) the actual car hire rate on each car handled in switching service.

Note 2: The examination of records, to determine switching reclaim allowances applicable between short line railroads less than one hundred miles in length, and connecting carriers shall be supervised by the General Committee, Transportation Division, Association of American Railroads, that Committee may initiate these examinations.

INTERPRETATIONS

5(a) Question: Does Car Hire Rule 5 apply when Car Hire switching charge is assessed on a ton instead of a car basis?
Answer: Yes.

5(b) Question: Carrier road "A" delivers a loaded car to road "B" which is unloaded and without changing the load in any manner, it is ordered to road "C" where it is unloaded at an industry located on road "C" within the same switching limits. Road "B" receives two switching charges for handling the car, and road "C" also receives a switching charge. Is road "B" entitled to a reclaim from road "A" in view of the fact such other than the car was not unloaded? If not, is road "C" entitled to reclaim from road "A"?
Answer: Road "B" is entitled to reclaim from road "A." The movement from road "B" to road "C" comes within the definition of interterminal switching service and no reclaim should be allowed.

5(c) Question: Carrier road "A" delivers a loaded car to road "B" for switching movement to consignee. Consignee refuses car on account of quality and car is returned to road "A" to await disposition. Shipper's car to an industry on road "C" within same switching limits, at which point it is unloaded. Is this an intermediate switch and reclaim due to road "C" or should road "B" collect reclaim?
Answer: Road "B" is entitled to reclaim from road "A" for the inbound movement. The return movement from road "B" to "A" was interterminal switching and no reclaim should be allowed.

5(d) Question: Carrier road "A" delivers a loaded car to road "B" for switching movement to consignee. After car is placed for unloading, car is instructed by road "A" to re-car card to a point beyond the switching limits via road "C". Is road "B" entitled to a reclaim from road "A" on the inbound movement and another reclaim from road "C" for outbound movement?
Answer: Yes.

5(e) Question 1: If a check of the records to establish the reclaim allowance under Car Hire Rule 5 has not been made within a period of one year and the interested road/roads makes a request for such check, is the intention of the rule that the check shall be made?
Answer: Unless there is an agreement to the contrary, a road may decide to check the records to determine the arbitrary reclaim under Car Hire Rule 5 when switching road has twelve (12) consecutive months of records available immediately prior to the requested date of check that have not been previously included in Rule 5 Study, then the other roads interested at that point are obligated under the rule to participate in such check.

Question 2: If one or more of the roads involved does not agree to join in such check, what action is necessary to secure compliance with the rule?

Answer: (a) If a road performing switching service does not agree to its records checked, the road making the request may give notice that it will not pay reclaims accruing after the date of such notice. The switching road will have no right to present further reclaims until a check is made in accordance with the Code of Switching Reclaim Rules and the revised reclaim allowance established, which shall then be applied to reclaims presented in accordance with Car Hire Rule 13(a).

(b) If a carrier road does not agree to join in a check to establish a revised reclaim allowance, the switching road may give notice that it will check its records in accordance with the Code of Switching Reclaim Rules-Freight and thereby establishing its revised reclaim allowance. After the date of such notice, the switching road will have the right to present reclaims in accordance with Car Hire Rule 13(a) at such established reclaim allowance.

5(f) Question: Is the intermediate switching road entitled to reclaim when the car is not handled on a switching charge?

Answer: Yes, except on cars on which the intermediate switching road participates in the freight rate and cars in interterminal switching movement.

5(g) Question: When is an empty car, moving over an intermediate switching road considered as in interterminal switching service?

Answer: An empty car is considered in interterminal switching service—

(a) when, after having been received loaded in interterminal switching service and without having been diverted to other service, it is returned to intermediate road for movement to the originating road, to the owner, or to another road under proper authority;

(b) when furnished and used for loading in interterminal switching service.

5(h) Question: A car moving into a junction point over road "A" is delivered to road "B" for handling in terminal switching service in connection with stop or milling-in-transit tariff authority, road "B" not participating in the freight rate, and the shipment is subsequently delivered by road "B" to road "C" for outbound road movement. Should road "A" pay to the terminal switching road the unloading reclaim and road "C" pay to the terminal switching road the loading reclaims?

Answer: Yes, regardless of subsequent adjustments or switching charges.

5(i) Question: When a car stopped in transit under tariff authority is delivered to a switching road to partly unload or to complete loading, the switching road being allowed two terminal switching charges, i.e., one for the inbound and one for the outbound movement, is the terminal switching road entitled to two terminal switching reclaims?
Answer: Yes.

5(j) Question: When a road, which participates in the freight rate, is allowed under tariff authority a terminal switching charge on a car handled in connection with stop or milling-in-transit service, is such road entitled to terminal switching reclaim?
Answer: Yes, regardless of subsequent adjustments of switching charges.

5(k) In considering the application of Car Hire Rule 22 on cars that are handled by a switching carrier in a situation where the switching carrier is holding cars in a pool and under conditions outlined in Car Hire Rule 22, the reclaims under Car Hire Rule 22 will include time from receipt by the switching carrier from a connecting line or, if picked up from road haul service, from the date and hour of arrival at loading point on the switching carrier to date and hour placed as evidenced by the demurrage report (See Note), or to the date and hour storage charges commence, less all hours after arrival on arrival day and all hours before placement on demurrage or storage on placement day.

Note: The "date and hour placed" for loading, referred to in Paragraph (k) of this rule, will be date and hour demurrage free time commences or the date and hour released loaded, whichever comes first.

This time has no relation to the time included in the arbitrary reclaim presented under Car Hire Rule 5 and will not be included in the detention time used in arriving at the Rule 5 arbitrary hours.

When a check is made of a switching line for the purpose of establishing an arbitrary under Car Hire Rule 5, time to be included in the check shall be determined as set forth in Appendix A, Rule 6, Section 2, Paragraph (j).

RULE 6-Responsibility for Cars Delivered to Non subscribers

In case a subscriber to the Car Service and Car Hire Agreement delivers a railroad owned freight car to a non-subscriber, it shall be responsible to the owner for the car hire accruing on the car while on such non-subscriber road. The owner will accept settlement for the use of the car only from the delivering subscriber.

Note: Rule 6 applies only to cars interchanged within Canada or Mexico.

RULE 7-Damaged Equipment-Handling Line Responsibility

(A) Requirements for car hire when repair of damage or destruction is handling line's responsibility—

(1) When a car has been reported to the owner as destroyed, or badly damaged, responsibility for the car hire shall cease at 12-Noon on the date of such report, provided depreciated valuation statement is requested under provisions of Mechanical Division Interchange Rules.

(2) If, on receipt from owner of depreciated valuation statement provided by AAR Interchange Rules, road reporting the car decides to